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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/527,680	03/17/2000	Rolf Jess Jorgensen	56672.000003	2845

1444 7590 01/18/2002

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 01/18/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.



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This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 10/12/01

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-14, 16-21, 23-34 is/are pending in the application.
Of the above, claim(s) 1-13, 20, 21, 26, 27 & 30 is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 14, 16-19, 23-25, 28, 29, 31-34 is/are rejected.
☐ Claim(s) _____ is/are objected to.
☒ Claim(s) 1-14, 16-21, 23-34 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
☐ Interview Summary, PTO-413
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES--

BEST AVAILABLE COPY

Receipt is acknowledged of Amendment of 10/12/01.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-13, 20-21, 26, 27, 30 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 11.

The composition have not been found allowables, thus methods not required.

This application contains claims 1-13, 20-21, 26, 27 drawn to an invention nonelected with traverse in Paper No. 11. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claims 14, 22, 24, 28, 30-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejection of record is maintained claim 14 is unclear; is "For" (line 4) a typo – "From"? "Suitable" "derivative" "such as" (claim 28) are still indefinite; no question of being used before, but in this case a composition is claimed, and one can have free reign in interpreting any limitations posed by "suitable" if it goes in the mouth, it's suitable as examiner sees it. "Derivative is also indefinite – claim 32 permits of one or more steps – i.e. - all the way to CO_2 – claim 23 is indefinite also as to derivative. Note that claim 30 depends on the composition of claim 1; but claim 1 is a method – does

this refer to claim 14? Claims 23, 24 depend on cancelled 22; 31 depend on cancelled 15. By "or the phosphate" are do not know if inorganic or organic compound is intended.

Claims 14, 16, 23-25, 28, 29 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The rejection of record 15 maintained – applicant; dentifrices his invention at item 3, of response this is what should be claimed, since, as a practical matter, age, weight, production capability and species would determine whether or not applicants approach would work, and the particular Ca binding materials would affect required amount there of, constituting a potentially unlimited amount of compounds/materials with in or ding ate amount of in vivo testing required. The ratio of effective materials should be claimed, as the composition is directed to prevention of hypocalcaemia. The compounds listed (claim 16) also include toxic compounds oxalic acid – for instance – thus, concentration should be claimed.

Claims 14, 16-18, 23-25, 28, 29, 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Ashmead - 3184381.

The rejection of record is maintained.

Claims 32-34 in essence reiterate 17 and 18, but more broadly.

Encapsulated forms (col. 3, line 59) of the chelates (line 45, col. 3) identified cis of EDTA (col. 1, line 50-52) are disclosed. This is the instant inventive composition as claimed, no patentable weight given to future intended use. In point of fact, the composition reduces the absorption, by the animal (not instantly claimed) of calcium, as stated at

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col. 2, line 6-14, when taken by mouth, the feed (lines 27-29) and in the drinking water (lines 34-36, col. 2), by binding complexing lines 9, 10, 11 col. 2) calcium.

Claims 14, 16-19, 25, 28, 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Laurent et al. 5082662).

See col. 6, summary. The instant compound/ composition is provided in feed, inherently the same attributes are present.

No patentable weight is given to future intended use of the compositions.

Claims 14, 16-19, 23-25, 28, 29, 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Polka et al 5409903.

Here too the instant composition s are disclosed.

See col. 5 and 6 – zeolite compositions are orally administered with film forming calcium free membranes (col. 6, lines 18-25) as capsules (lines 46-50, col. 6). The compositions are effective below pH 4.5 (col. 9, 10) put the compositions are not acid ifying per se.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 16-19, 23-25, 28, 29, 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkyō JP 63056258 or Schaumann-DE 1255466 and SATO et al 5906842).

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Shinkyō and Schaumann, as indicated at prior office action of (7/12/01) show.

The instant Zeolite composition, but, applicant states neither shows encapsulated form. However, JATO show compositions also for dairy cows, with the advantage of encapsulation – Rumen by pass (col. 3, lines 25-30).

It would have been obvious to a person of ordinary skill in the art at time the invention was made desiring to utilize strinkyō's or Schaumann's additive in cow diets, to utilize the form as is well known in the art, and exemplified by JATO, encapsulation, to prevent degradation in the turners.

There is no non-obvious and/or unexpected results obtained since the prior art is well aware of the use of Zeolites and capsules and use of additives for the functionality for which they are known to be used is not a basis for patentability. The selection of adjuvants is a result effective parameter determinable by artisan as desired for purposes of providing ingredient compatibility and controlled release.

All the critical elements of the instant invention are disclosed.

Applicant's arguments filed on 10/12/01 have been fully considered but they are not persuasive. Applicant's arguments are to the effect the prior art no longer reads on the amended claims, now, with encapsulated zeolites, have been reformulated accordingly and new art applied.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday through Friday from 7 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/LR

January 8, 2002

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is fluid and cursive, with the first name "Neil" and last name "Levy" clearly distinguishable.

NEIL S. LEVY
PRIMARY EXAMINER